FILE COPY

Office - Supreme Court, U. S.
FILED
OCT 5 1946
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1946

No. 574

THE RESCUE ARMY, a corporation, and CHARLES T. MURDOCK,

Appellants,

vs.

THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,

Appellee.

APPELLANT'S REPLY TO APPELLEE'S STATEMENT OF GROUNDS AGAINST JURISDICTION.

ROBERT H. WALLIS,
350 East Fourth Street, Long Beach, California,
Attorney for Appellants.

Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

SUBJECT INDEX.

	PAGE
General statement as to nature of reply to appellee's statement against jurisdiction	1
Jurisdiction exists regardless of one appellant being a corporation	1
The judgment of the State Supreme Court denying petition for writ of prohibition has appealable finality	2
Quotations in appellants' jurisdictional statement are proper under Rule 12, rules of this court	3
The argument portion of the statement against jurisdiction, page 8, et seq., sets forth no matter against jurisdiction	5
Appellant Murdock has been injured	5
Appellee misstates appellants' grounds of complaint	6
Appellee's statement concerning the issues in Ex parte Darte is misleading	7
Conclusion	8

TABLE OF AUTHORITIES CITED.

CASES.

	PAGE
American Exp. Co. v. Michigan, 17 U. S. 404, 44 L. Ed. 823	3
823	3
Bandini Petroleum Co. v. Superior Court, 284, U. S. 8, 76 L. Ed. 136	3
Darte, Ex parte, 172 Cal. 47	7
Hague v. C. I. O., 307 U. S. 496, 84 L. Ed. 1423	2
Mission ex rel. St. Louis B. & M. R. Co. v. Taylor, 266 U. S. 200, 69 L. Ed. 247	2

STATUTES.

Los Angeles City Ordinance No. 77,000	8
Rules of the Supreme Court of the United States, Rule 12	4

IN THE

Supreme Court of the United States

October Term, 1946

No. .....

THE RESCUE ARMY, a corporation, and CHARLES T. MURDOCK,

Appellants,

vs.

THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,

Appellee.

APPELLANT'S REPLY TO APPELLEE'S STATEMENT OF GROUNDS AGAINST JURISDICTION.

Appellants will reply as fully as seems necessary and proper to those portions of appellee's "Statement of Matter and Grounds Making Against the Jurisdiction" of this Court in this case which are pertintent to that question. They will briefly point out such statements as are irrelevant to that question or are otherwise inappropriate.

No purpose relevant to this Court's jurisdiction in this proceeding appears to be subserved by the comparison of the Rescue Army and the Gospel Army cases. Hence that

portion of appellee's statement is passed without discussion, otherwise that to point out that appellee has not claimed that jurisdiction herein is affected by the fact that one of the plaintiffs is a corporation, since the statement concedes that it is enough that Charles T. Murdock, the other plaintiff, is a natural person.

The situation as to parties plaintiff was the same in *Hague v. C. I. O.*, 307 U. S. 496, 84 L. Ed. 1423, cited by respondent.

The Judgment of the State Supreme Court Denying Petition for Writ of Prohibition Has Appealable Finality.

The first and only place in appellee's Statement Against Jurisdiction wherein appears matters relevant to that question is page 6. It is claimed that the judgment of the highest court of California denying a petition for a writ of prohibition restraining the lower court from entertaining jurisdiction is a judgment which "this court has never seen fit to" hold to be final for the purpose of appeal to this Court.

On the contrary the decisions of this Court have, it is believed, uniformly held that such judgments of the State Supreme Courts have appealable finality.

In *Mission ex rel. St. Louis B. & M. R. Co. v. Taylor*, 266 U. S. 200, 69 L. Ed. 247, in deciding this question the Court said:

> "The suggestion was made, at the argument, that this Court is without jurisdiction, because the judgment below was not final. The contrary is settled. The application for a writ of prohibition is an independent adversary suit which was finally by the

judgment under review. Detroit & M. R. Co. v. Michigan R. Commission, 24 U. S. 564, 570, 60 L. Ed. 802, 807, 36 Sup. Ct. Rep. 424."

In *Bandini Petroleum Co. v. Superior Court*, 284 U. S. 8, 76 L. Ed. 136, the Court, through Chief Justice Hughes, said:

> "This Court has jurisdiction. The proceeding for a writ of prohibition is a distinct suit and the judgment finally disposing of it is a final judgment within the meaning of Section 237(a) of the Judicial Code,"

citing six prior decisions rendered by this Court, including *Missouri, etc. v. St. Louis, supra.*

The *Bandini* appeal was from California and the opinion shows that under the laws of that state, as generally elsewhere, Prohibition is an independant adversary proceeding. On the same principle the same rule has been held applicable to judgments granting or refusing to grant mandamus in several cases, including *American Exp. Co. v. Michigan*, 17 U. S. 404, 406, 44 L. Ed. 823, 824.

Quotations in Appellant's Jurisdictional Statement Are Proper Under Rule 12, Rules of This Court.

It seems that appellee's counsel has misunderstood that portion of the Jurisdiction Statement filed by appellants of which the Statement Against Jurisdiction asserts, appellants

> "have seen fit to discuss in some detail the merits of the case, the substance of the pleadings, answering briefs, reply briefs and amicus curiae brief, and have included rather copious quotations therefrom."

The purpose of the "copious quotations" was an intention to comply with Rule 12, the third paragraph of the Rules of this Court concerning the "Jurisdictional Statement," wherein "such pertinent quotations of specific portions of the record" are required "as will support the assertion that the rulings of the Court were of a nature to bring the case within the statutory provision believed to confer jurisdiction on this Court."

The quotations in the instant Jurisdictional Statement are intended to show how and when and the manner in which the claimed constitutional questions were raised by appellants and the identity of such questions; also that both sides and the State Supreme Court treated said questions as being involved and necessary to the decision of the case; and in that behalf appellants felt warranted in making such quotations more copious than would ordinarily be done in view of the fact that appellants felt it necessary to thereby show that the constitutionality of substantially all of the sections of the Ordinance involved had been challenged by appellants as plaintiffs in the State Court, and had been considered and passed upon by it.

It is believed that in this "Statement of Grounds upon which it is contended the questions involved are substantial" no "discussions" are to be found, but merely quotations and explanatory statements thereof as showing relativity, without which disconnected quotations lose their meaning. Also, in some instances, as permitted by the rule above mentioned, appellants summarized rather than quoted a part of a pleading or other document.

The Argument Portion of the Statement Against Jurisdiction, Page 8 et seq., Sets Forth No Matter Against Jurisdiction.

Apparently respondent's counsel regarded appellants' procedure as "discussing" the questions involved and therefore felt warranted in the argument or miniature brief set forth on pages 8 to 23 of the Statement Against Jurisdiction.

In due time appellants will file their brief and expect to refute the entire argument which appellee has presented.

However it seems opportune to point out briefly the following errors contained in said argument.

Appellant Murdock Has Been Injured.

The theory that appellant Murdock cannot be injured by the Ordinance involved because he alleged that he is engaged in purely religious activities and one section of the Ordinance exempts purely religious activities from the requirements of many other sections, is misleading and fallacious because it ignores other provisions which permit city officials to classify his activities as charitable and subject him to all of the exactions of which complaint has been made; also said theory disregards the allegations of the petition by which it is averred that he has been charged and had been subjected to two trials and was about to be tried a third time on charges of having violated certain Ordinance provisions from which (if his allegation that his activities are purely religious are taken as true), he is exempted under the provision which respondent relies on to complete the thesis attempting to show that Murdock has not been injured.

Appellee Misstates Appellants' Grounds of Complaint.

The Statement Against Jurisdiction avers:

> "Appellants' chief complaint appears to be of two kinds:
>
> (1) Possibility of delay in issuing identification cards, and (2) possibility of discrimination."

To be charitable let us say that appellee's counsel shows lack of familiarity with the record.

Some of the chief complaints made, which the Jurisdictional Statement clearly reveals, are:

(a) *Certainty* of long, unreasonable and unnecessary delays in issuing identification cards (because the Ordinance requires them unless arbitrarily waived by designated officials) and possibility that the applicant for a permit (identification card) will never be granted one, depending on the whimsy of Commissioners.

(b) Discrimination, made possible by certain provisions directly involved in this proceeding, which permit the exemption of charitable organizations by City Commissioners with no rule or standard to govern their action.

(c) That the entire Ordinance, section by section, constitutes a planned procedure to eliminate all organizations and individuals except the favored few from doing charitable or religious-charitable work in the City of Los Angeles.

At least a half dozen other "chief" complaints have been registered and denied directly or implicitly by the State Supreme Court, as appellants expect to show in their brief.

Appellee's Statement Concerning the Issues in Ex Parte Darte, 172 Cal. 47, Is Misleading.

The rule made by the Los Angeles City Commission under which the Salvation Army was required to deed its property to a city board, to secure a permit, was only indirectly involved in the *Darte* case, just as numerous sections of the instant Ordinance are involved herein.

There the criminal complaint charged violation with soliciting and selling donated goods without a permit only, but the Court considered and held invalid other provisions and rules which impeded securing a permit. A similar situation exists herein.

Indeed, except for the one rule mentioned by appellee, the other invalid provision in *Ex Parte Darte* are paralleled by provisions of the instant Ordinance in the guise of other language.

Appellee states that the *Amicus Curiae* Brief "filed in this case" was "for and on behalf of not only the Salvation Army, but also thirteen other named organizations, a majority of which are religious organizations."

In reply to this irrelevant assertion which is also made, in substance, in said brief, appellants feels that it is pardonable to say, as they did in replying to that brief, that the records of the City of Los Angeles show that these organizations are all on the selected and favored list who have been arbitrarily relieved and exempted from the time-consuming, burdensome and prohibitive prior restraints under which others, including appellants, are held, and which appellants challenge as unconstitutional.

Appellants assert and promise that in their brief to be filed herein in due course it will be shown that no section

of the Ordinance involved has been fairly reviewed in the Statement Against Jurisdiction. In fact the two dissenting opinions of the State Supreme Court set forth in the appendix to the Jurisdictional Statement analyze most of them judicially and demonstrate the truth of this assertion.

Conclusion.

Appellee's counsel correct the Jurisdictional Statement in respect to the title of the Los Angeles City Ordinance involved herein and say that it consists of a six line paragraph which he quotes and that it is erroneous to give the title as "charities."

The correction will not be seriously disputed but, curiously, the exhibit attached to the Statement Against Jurisdiction is entitled "charities" and purports to be "Ord. No. 77,000" as the Jurisdiction Statement describes it, counsel for appellants having copied said title and description from a like exhibit in one of the appellee's briefs filed in the State Courts.

Appellants feel assured that nothing contained in the opposition statement warrants the contention not too strongly made therein that this Court should decline jurisdiction.

Respectfully submitted,

ROBERT H. WALLIS,
Attorney for Appellants.